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Rosetta Stone v. Google (Joint Appendix)

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Vol. VII, Tab 38 - Ex. 63 - Hill Deposition (Rosetta Enforcement Specialist)

Michael Hill

Rosetta Stone

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

**Certified
Transcript**

ROSETTA STONE LTD.,

Plaintiff,

vs.

GOOGLE INC.,

Defendant.

Civil Action No.

1:09cv736

(GBL/TCB)

Washington, D.C.

Friday, February 26, 2010

Videotape Deposition of:

MICHAEL HILL,

the witness, was called for examination by counsel for the Defendant, pursuant to notice, commencing at 9:08 a.m., at the law offices of Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, Northwest, Conference Room 305, Washington, D.C., before Dawn A. Jaques, CSR, CLR, and Notary Public in and for the District of Columbia, videotaped by Dan McClutchy, when were present on behalf of the respective parties:

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1 A -- and then I put that in and I do the
2 whole Excel auto add, and it adds up the totals
3 for those months and presents the chart.

4 Q Okay. So you don't actually use the BSA
5 reports to prepare your chart? You use numbers
6 that Jason has extracted from those reports?

7 A Numbers that he's given me directly or
8 he's put on his reports.

9 Q Okay. Do you know where Jason gets
10 those numbers?

11 A I would assume directly from the BSA
12 reports.

13 Q Okay. Does the BSA provide reports more
14 frequently than on a monthly basis?

15 A They might if requested, but, again, I'm
16 unsure. I don't deal too much with the BSA.

17 Q Okay. You haven't seen, for instance, a
18 weekly report from the BSA?

19 A No, not that I can recollect.

20 Q Okay. What geographic territory does
21 the BSA cover in monitoring for piracy and
22 counterfeiting?

23 A The entire globe, to my knowledge.

24 Q And are you aware of any tactics, if you
25 will, that a pirate or a counterfeiter might

1 employ to avoid being detected by the BSA?

2 MR. LELAND: Objection, foundation.

3 THE WITNESS: Could you rephrase that?

4 BY MR. OBLAK:

5 Q Sure. Are you aware of any tactics, any
6 methods, that a pirate or a counterfeiter might
7 employ to avoid being detected by the BSA?

8 A Yes.

9 Q Okay. What are some -- what methods are
10 there that you're aware of?

11 A So pirates use IP address proxies and
12 different cloaking technologies to hide their real
13 IP address, so they'll either -- what's the term
14 they use? Spoof. It will spoof their IP address
15 to throw off, you know, exactly who they are, so
16 they'll try to hide behind that.

17 Q Okay. And when they do that, am I
18 correct that that prevents the BSA from knowing in
19 fact who they are, but doesn't prevent the BSA
20 from detecting the piracy?

21 A I think that would be true.

22 Q Okay. The spoofing only hides from the
23 BSA the true origin of the pirate; is that right?

24 A Yes.

25 Q Okay. So my question is a little more

1 precise then.

2 Are you aware of any methods through
3 which a pirate or a counterfeiter could avoid
4 detection altogether by the BSA so they wouldn't
5 be able to tell that that person was making
6 available pirated software over the Internet?

7 A Yes.

8 Q And what methods are those?

9 A Direct communication with other pirates,
10 non-indexable communications, like they never put
11 it on an indexable place. When I say indexable,
12 say a search engine like Google comes across the
13 index links for the torrent file. It was never
14 indexed by a search engine, so that could happen
15 if I called you on the phone and said, hey, I've
16 got this copy of Rosetta Stone, do you want a
17 copy? And you use a client like AOL Instant
18 Messenger or something to transfer directly from
19 my computer to yours.

20 Q And if they --

21 A Chat rooms maybe.

22 Q I'm sorry. But in that circumstance, if
23 I tried to find that same outlet for the software
24 on the Internet, I wouldn't be able to because it
25 hadn't been indexed, correct?

1 A Repeat that one more time.

2 Q Sure, sure. So in the scenario you just
3 described, I couldn't also find that person who
4 was willing to sell me the pirated software over
5 the Internet because they haven't been indexed by
6 a search engine, for example?

7 A If I -- yes, if I were just talking to
8 you; no, if we were trading software in a chat
9 room, because I could be -- as a member of the
10 BSA, I could be sitting in that chat room and see
11 you communicating with each other like on MIRC, I
12 could see it then, and then it would be detected.

13 Q Got it.

14 A Or if I was recording the entire chat
15 room's conversations in MIRC.

16 Q Right. And -- but am I correct then
17 that if a pirate was not -- not allowed themselves
18 to be indexed on the -- by a search engine, they
19 also couldn't be found by a search engine as well?

20 Let me withdraw that. That was just a
21 terrible question.

22 If someone was not indexable, as you've
23 described it, so they couldn't be detected by the
24 BSA, isn't it also the case that they wouldn't be
25 able to be located by doing a Google search

1 because they would not have been indexed or
2 indexable?

3 A Can you possibly rephrase that?

4 Q Sure. If somebody could --

5 A I just want to make sure I'm answering
6 all points that you're asking.

7 Q Right. So you described a way in which
8 someone could avoid detection from the BSA by not
9 putting themselves out into the Internet in a way
10 that they could be indexed, right?

11 A Correct.

12 Q That was one way you could avoid
13 detection by the BSA.

14 A Uh-huh.

15 Q And if somebody -- but if somebody did
16 that, they also wouldn't be generally locatable by
17 searching through an Internet search engine,
18 correct?

19 A Correct. The file that you and I would
20 be talking about, and it was never posted on a
21 site, would probably not be indexable by Google
22 unless somebody recorded the entire conversation
23 we had in the chat room and then posted it to the
24 Internet.

25 Q Right.

1 A So that could be possible.

2 Q Right. But our direct -- the direct
3 communications that you've described would have to
4 have somehow been recorded and then indexed onto
5 the Internet?

6 A Yes.

7 Q Okay. Do you know of any way that
8 some -- that a pirate or a counterfeiter could be
9 indexed -- indexable and indexed by Internet
10 search engines but still not detectable by the
11 BSA?

12 A Sure. I mean -- so repeat that you said
13 not detectable by the BSA and not detectable by --

14 Q No, no, I'm sorry. So let's say I'm a
15 pirate and I want people to know that they can
16 come to me -- they can search on the Internet and
17 they can come to me and they can get Rosetta Stone
18 pirated software.

19 A Sure.

20 Q Okay. Is there a way that I can do that
21 and be indexed so that the world can find me
22 through search engines but that the BSA couldn't
23 find me when it was looking for Rosetta Stone
24 pirates?

25 A Yes, if the community you're involved in

1 was not indexed. So like forums tell -- some
2 Websites tell spiders or search engines BOTS not
3 to index them, and if the search engine is
4 following the rules, they'll see that tag at the
5 beginning of the Web page saying do not search me
6 or do not index me, and the spider will move on.

7 But there's -- if you know of that
8 community, you can go to that community and search
9 that entire Web page yourself on their search
10 engine of that community and find the file indexed
11 there.

12 Q Okay.

13 A But if anybody ever posts that link that
14 was in that community on the outside of that
15 original gate, it could still be indexed.

16 Q Got it. Do you know -- do the BSA
17 reports that you've reviewed, do they also break
18 out as a category advertisements, paid
19 advertisements, on Google by either pirates or
20 counterfeiters?

21 A I do not think so.

22 Q Do you know whether --

23 A I don't recall --

24 Q -- the BSA -- I'm sorry.

25 A I don't recall seeing that one, no.

1 Q Do you know whether the BSA tracks that
2 kind of information in the work it does for
3 Rosetta Stone?

4 A I don't think they do.

5 Q Okay.

6 MR. OBLAK: Let's mark this as No. 1.

7 (Hill Deposition Exhibit No. 1 was
8 marked for identification.)

9 (A discussion was held off the record.)

10 MR. LELAND: So this will all be as one
11 exhibit?

12 MR. OBLAK: This will all be as one
13 exhibit, and for the record, it is an e-mail and
14 an attachment. The Bates number range for the
15 entire document is RS-00176184, and the attachment
16 goes through --

17 THE WITNESS: Do I have a copy of that
18 e-mail or just the attachment?

19 BY MR. OBLAK:

20 Q -- 204 -- oh, I'm sorry, you need the
21 e-mail, too. We'll redo it. This is actually
22 going to be the first. Sorry about that.

23 Mr. Hill, do you recognize this e-mail?

24 A I don't remember it specifically. It
25 looks like I was asked to explain a lot of the